IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2660 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE MR SHAH

==========

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

==========

GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

KAMJIBHAI KHIMJIBHAI SARVAIYA - Respondent(s)

==========

Appearance :

MR HARDIK C RAWAL for Petitioner No(s).: 1.

MR KISHOR M PAUL for Respondent No(s).: 1.

==========

CORAM :HON'BLE MR JUSTICE MR SHAH

Date : 22/06/2005

ORAL JUDGMENT

Rule. With the consent of the learned advocates appearing for the partiesthe matter is taken up for final hearing today.

2. In this petition under Article 227 of the Constitution of India, the petitioner Gujarat State Road Transport Corporation has challenged the legality and validity of the order passed by the Industrial Court No.2, Gujarat at Rajkot dated 27.2.2004 in Reference (IT) No. 17 of 1994 by which the Tribunal has partly allowed the State's Reference by quashing and setting aside the order of punishment impugned by the petitioner Corporation withholding 3 increments with future effect and substituting the punishment by reducing it to withholding of one increment with future effect and also quashing and setting aside the order passed by the petitioner Corporation to recover Rs. 11,350. The Tribunal has also further directed the petitioner to pay 50% backwages/difference in salary to the respondent workman.

3. The respondent workman was serving as 'Driver' with the petitioner Corporation. It appears from the record that when he was driving the ST bus the same dashed with one stationery truck due to which 5 passengers were injured. It is the case of the petitioner Corporation that there was a loss of Rs. 60000 and therefore the Corporation passed an order of recovery of Rs. 11350 as actual loss caused to the ST Corporation. It also appears from the record that even departmental enquiry was initiated against the respondent workman for the said incident and after conclusion of the departmental enquiry by order dated 24.11.1992 the petitioner Corporation imposed the penalty of withholding of 3 increments with future effect. Being aggrieved and dissatisfied with the order of recovery of Rs. 11350 the respondent workman had raised an industrial dispute and the Assistant Labour Commissioner, Saurashtra-Kutch by order referred the dispute to the Industrial Court. It is required to be noted that terms of reference were whether the order of recovery as regards recovery of amount of loss from the salary of respondent workman should be set aside or not. It is also required to be noted that there was no other dispute referred, meaning thereby there was no challenge to the order of punishment imposed by the petitioner Corporation by order dated 24.11.1992 withholding 3 increments with future effect. Inspite of the aforesaid facts and circumstances the Industrial Court, Rajkot, has gone beyond the terms of reference and by judgment and award dated 27.2.2004 has partly allowed the said Reference by not only quashing and setting aside the order of recovery of Rs. 11350 but also quashing and setting aside the order of punishment dated

24.11.1992 withholding 3 increments with future effect. Being aggrieved and dissatisfied with the same, the petitioner has preferred the present Special Civil Application under Article 227 of the Constituition of India.

4. Shri Hardik Raval, learned advocate appearing on behalf of the petitioner has vehemently submitted that the Industrial Court has gone beyond the terms of reference which has exceeded its jurisdiction, and inspite of the fact that the terms of Reference were “as to whether the order of recovery from the wages of Shri Kanjibhai Khimjibhai Sarvaiya should be cancelled or not” the Labour Court has interfered with the order of punishment of stoppage of 3 increments and reducing the same by stoppage of one increment with future effect and has also quashed and set aside the order of recovery of Rs. 11350 from the respondent workman and has further ordered that the respondent workman be paid 50% of the wages which became payable on account of aforesaid change in the order of punishment. Therefore it is requested to allow the present Special Civil Application.

5. Shri Paul, learned advocate appearing on behalf of the respondent workman is not in a position to satisfy this Court with regard to exercise of power by the Industrial Court beyond the terms of Reference and fairly concedes that the term of Reference was on the question “as to whether the order of recovery from the wages of Shri Kanjibhai Khimjibhai Sarvaiya should be cancelled or not”. In that view of the matter, the judgment and award passed by the Industrial Court, Rajkot, interfering with the order of punishment dated 24.11.1992 which is beyond the scope of terms of Reference cannot be allowed to stand and is required to be quashed and set aside.

6. Under the circumstances, the judgment and award passed by the Industrial Court, Court No.2, Gujarat, Rajkot, dated 27.2.2004 is hereby quashed and set aside. The matter is remanded to the Industrial Court, Court No.2, Rajkot with a direction to the Industrial Court for deciding the Reference considering the terms of Reference only. Considering the fact that the Reference (IT) No. 17 of 1994 is of the year 1994, the Industrial Court is directed to decide and dispose of the said Reference as early as possible and

preferably within the period of 6 months from the date of receipt of this order. It will be open to the petitioner to raise industrial dispute against the respondent No.3 with regard to challenging order of punishment in accordance with law and on merits if permissible under the law.

Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]
rmr.

.